

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

WALTER C. SMITH, III,

Defendant.

Case No. 06-cr-30070-DRH

ORDER

HERNDON, District Judge:

Now before the Court is defendant Walter C. Smith, III's Second Motion to Continue trial (Doc. 23). Defendant seeks further continuance of the trial date because of his pending Motion to Suppress (Doc. 19), because he is still attempting to review hours of videotape (produced in discovery) with his counsel, and because the Government's recently filed Motion for Protective Order (Doc. 20) suggests additional evidence that may be discoverable (Doc. 23, p. 1). Therefore, defendant Smith ultimately requests a continuance to allow adequate preparation of his defense and to await final disposition of his pending Motion. The Government does not object.

In the Court's analysis of the factors which may weigh in favor of a continuance, it notes that Defendant has a right to have his pending pre-trial motion adequately briefed and argued at a hearing (if necessary), so that it may be resolved upon the merits prior to trial. As trial is currently scheduled for October 2, 2006,

failure to grant a continuance would prohibit this very right. Defendant suggests that there is also the possibility he may discover additional evidence, thereby creating the chance that this additional evidence could substantially aid in his defense. Proceeding without allowing Defendant either the chance to discover this evidence or the chance to adequately prepare his defense would also result in a miscarriage of justice. Further, there is the pending Motion for Protective Order, filed by the Government, which must also be determined prior to trial.

In consideration of these factors above, the Court finds that a continuance is necessary in order to avoid a miscarriage of justice. Therefore, the Court being fully advised in the premises also finds, pursuant to **18 U.S.C. § 3161(h)(8)(A)**, that the ends of justice served by the granting of such continuance outweighs the best interests of the public and Defendant in a speedy trial. Therefore, the Court **GRANTS** Defendant's Second Motion to Continue (Doc. 23). The Court **CONTINUES** the jury trial scheduled for Monday, October 2, 2006 to **Monday, January 8, 2007 at 9:00 a.m.** The time from the date the original motion was filed, September 22, 2006, until the date to which the trial is rescheduled, January 8, 2007, is excludable time for the purposes of speedy trial.

IT IS SO ORDERED.

Signed this 27th day of September, 2006.

/s/ David RHerndon
United States District Judge